

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1597

United States Court of Appeals
FOR THE SECOND CIRCUIT

WILLIAM W. MEED,

Plaintiff-Appellant,

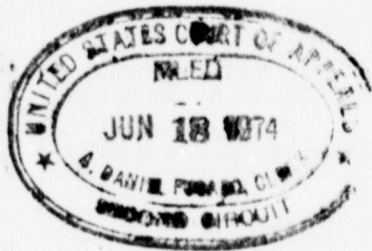
—against—

LOUIS FRANK, as Police Commissioner of Nassau County
(Successor to FRANCIS B. LOGNEY, former Police Com-
missioner of Nassau County), and THE NASSAU COUNTY
POLICE DEPARTMENT,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX



NEIL B. HIRSCHFELD
Attorney for Plaintiff-Appellant
99 Park Avenue
New York, N. Y. 10016

JOSEPH JASPAN
County Attorney, Nassau County
Attorney for Appellees
Nassau County Executive Building
Mineola, New York 11501

PAGINATION AS IN ORIGINAL COPY

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73C 1320

1A

Mead -vs- FRANK et al

DATE	FILINGS- PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
-4-73	Complaint filed. Summons issued.	
-13-73	Summons returned & filed./Executed.	
1-2-73	Notice of motion ret. 10-19-73 for an order dismissing the complaint and memorandum of law in support of motion filed.	1 JS5 2
-19-73	Before COSTANTINO, J. Case called & motion adjd to 11-2-73 @ 10 AM	3/4.
2-73	Before COSTANTINO, J. - Case called- Deft's motion for an order dismissing the complaint adjd to 11/9/73	
1-9-73	Before COSTANTINO J - Case called for hearing on deft's motion to dismiss complaint. Motion argued. Decision reserved.	
-16-73	Defts' reply memorandu of law filed.	
26-74	By COSTANTINO, J. - Memorandum and order dtd 2-26-74 dismissing complaint filed.(p/c mailed to attys)	5
28-74	Notice of appeal filed Copy sent to C of A. JN 7113	6
6-74	Memorandum of law in opposition to motion to dismiss filed.	7
6-74	Affidavit of Joseph W. Allen filed.	8
6-74	Above record on appeal certified and handed to Neil B. Hirschfeld for delivery to the Court of Appeals.	9
A TRUE COPY ATTEST 5/6/74		
LEWIS ORGER,		
BY <i>Marc Miller</i>		



By: MARC MILLER *Marc Miller*
DEPUTY CLERK

2A

SUMMONS IN A CIVIL ACTION

CIV. 1 (3-64)
(Formerly D. C. Form No. 45 Rev. (6-59))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

SEP 13 1973

CIVIL ACTION FILE NO. _____

WILLIAM W. MEED,

Plaintiff

v.

LOUIS FRANK as Police Commissioner of Nassau
County (Successor to FRANCIS B. LOONEY, former
Police Commissioner of Nassau County) and
THE NASSAU COUNTY POLICE DEPARTMENT

Defendant
s

SUMMONS

730 1320

To the above named Defendant s:

You are hereby summoned and required to serve upon

JOSEPH W. ALLEN

plaintiff's attorney , whose address is 299 Broadway
New York, New York 10007

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Louis O'Neil
Clerk of Court.
Marie White
Deputy Clerk.

Date: *September 4, 1973*

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

2:00 PM '73

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

WILLIAM W. MEED,

Plaintiff,

CIVIL ACTION

-against-

File No.

LOUIS FRANK as Police Commissioner
of Nassau County (Successor to
FRANCIS B. LOONEY, former Police
Commissioner of Nassau County),
and THE NASSAU COUNTY POLICE
DEPARTMENT,

COMPLAINT

Defendants.

730 1320

----- x

THE PLAINTIFF herein, complaining of the defendants,
respectfully alleges as follows:

1. The jurisdiction of this Court to entertain the
within cause of action is founded upon and conferred by:

- (a) Title 42, United States Code, Sect. 1983
- (b) Title 28, United States Code, Sect. 1343(3)(4)
- (c) Title 28, United States Code, Sdct. 1391
- (d) Title 28, United States Code Sect. 2282 and
Sect. 2284
- (e) Title 28, United States Code Sect. 2201 and
Sect. 2202
- (f) Title 28, United States Code, Sect. 1651(a)

2. That at all times hereinafter mentioned, plaintiff
was and is a citizen of the United States and of the State of
New York, and for several years last past has resided and
still resides at No. 112 Onderdonk Avenue, Manhasset, New York.

3. That the defendant, LOUIS FRANK, as Police Commiss-
ioner of Nassau County (successor to FRANCIS B. LOONEY, former
Police Commissioner of Nassau County), hereinafter referred to

as Police Commissioner, is the duly appointed Chief Executive and Administrative Officer of the Nassau County Police Department deriving his powers from the Nassau County Administrative Code and the duly promulgated Rules and Regulations of the Nassau County Police Department.

4. That the defendant, THE NASSAU COUNTY POLICE DEPARTMENT, hereinafter referred to as the Police Department, was and is the duly authorized Police agency within the confines of the County of Nassau.

THE FACTS

5. That between June 19, 1945 and August 24, 1946, the plaintiff served in the United States Navy and was Honorably Discharged therefrom on or about August 24, 1946, and voluntarily re-enlisted in the Naval Reserve Force for a period of six (6) years.

6. That thereafter the plaintiff was a member of the Metropolitan Police Department of Washington, D.C. from June 1951, until January 31, 1953. That prior to such appointment to the Metropolitan Police Department of Washington, D.C. the plaintiff's character and background was fully investigated and he was found fully qualified for appointment to such Police Department.

7. That thereafter, after having successfully competed in an open competitive Civil Service examination, the plaintiff was duly appointed a patrolman in the Nassau County Police Department and upon such appointment the plaintiff became a member of Pension System within the defendant Police Department.

8. That prior to plaintiff's appointment to the Nassau County Police Department his character and background was fully investigated and he was found fully qualified in this respect for such appointment.

9. That the powers, duties, rights and privileges of competitive class civil service employees within the State of New York are set forth in the New York State Constitution, the Civil Service Law of the State of New York, the Civil Service Rules of the State of New York, the Nassau County Administrative Code and the duly promulgated Rules and Regulations of the Nassau County Police Department.

10. That on or about the 20th day of February, 1968, the plaintiff was suspended from his duties as a policeman in the Nassau County Police Department and thereafter continued under suspension until January 6, 1969, at which time the plaintiff received notice that he was dismissed from his position as a Nassau County Policeman and his name was dropped from the rolls of the defendant Police Department.

11. That such suspension and dismissal came about by virtue of charges preferred against the plaintiff on or about the 8th day of March, 1968, by Deputy Chief Inspector, Roland W. Grant, then the Commanding Officer, First Division of the Nassau County Police Department. The charges alleged violations of Article IX, Rules 10 and 11 and Article VI, Rule 9, subd.1 of the Rules and Regulations of the Nassau County Police Department. Specifically the charges preferred against the plaintiff alleged as follows:

"SPECIFICATIONS:

1. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth Precinct, did, at, about or between 1100 and 1200 hours on February 15, 1968, act in a manner unbecoming an officer and prejudicial to the good order and efficiency of the Police Department by taking and carrying away merchandise consisting of two one pound cans of coffee, a rubber bath mat and a package of sponge cloths from B. Altman and Company, Northern Boulevard, Manhasset, New York, without making payment for same and without the consent of the lawful owner.
2. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth precinct, did, at, on or about 2000 hours on February 17, 1968, fail to obey the instructions and directions of a Superior Officer by refusing to submit a written report of his activities at and conversations with employees of B. Altman and Company, Northern Boulevard, Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Chief Inspector Roland W. Grant.
3. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth Precinct, did, at, on or about 1745 hours on February 19, 1968, fail to obey the instructions and directions of a Superior Officer, by refusing to submit a written report of his activities at and conversations with employees of B. Altman and Company, Northern Boulevard, Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Inspector Richard W. Votapka."

Article IX, Rules 10 and 11 read as follows:

"Rule 10. A member of the Department found guilty of violating a rule or regulation of the Department, or of the provisions of any order or orders, or of disobedience of orders, or of cowardice, or of intoxication while on duty, or while in uniform, or of conduct unbecoming an officer, or of making a false official communication, record or statement, or a member of the Department convicted in a court having criminal jurisdiction, may be dismissed from the Department, or suffer such other punishment as the Commissioner of Police may direct.

Rule 11. Disorder or neglect to the prejudice of good order, efficiency or discipline, though not specifically mentioned in these rules and regulations, shall be taken cognizance of by the Department, and members of the Department found guilty thereof will be punished, at the discretion of the Commissioner of Police."

Article VI Rule 9 Subd 1 reads as follows:

"Rule 9. Members of the Force or Department shall:

1. Promptly obey all lawful orders, instructions, directions and requests of Superior Officers.
- a. Orders of the members of the Force assigned to the Office of Commissioner of Police, Office of Chief Inspector, Office of Chief of Headquarters, Office of Chief of Detectives, or the Office of Chief of District, when so directed, shall be deemed to be the orders of such members' superior and shall be promptly obeyed as such."

(Attached hereto and marked exhibit "A" is a copy of the charges and the above enumerated Rules.)

12. That specifications Nos. 2 and 3 of the aforementioned charges were unlawful in that they were violative of plaintiff's constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and contrary to the decisional law as set forth by the United States Supreme Court in Gardner v. Broderick, 392 U.S. 273; Uniformed Sanitation Men Association, Inc. v. Commissioner of Sanitation of the City of New York, 329 U.S. 280; and Garrity v. New Jersey, 385 U.S. 493.

13. That thereafter on or about June 5, 1968 a quasi-judicial hearing was held as required by the Nassau County Administrative Code, Section 8-13.0 subdivision c and Section 75 (2) of the Civil Service Law of the State of New York and Deputy Chief Inspector Burt McConnell was designated as Trial Commissioner. After several adjournments and postponements the hearing was concluded on or about December 11, 1968 and the Trial Commissioner reserved decision.

14. That the evidence given by defendants' witnesses was a maze of contradictions even to the simple point of what clothing the suspect was wearing, in that the defendants' witnesses could not agree as to type or color. That the purported identification of petitioner was primarily based on the testimony of a single witness, whose testimony showed that she had little more than a fleeting glimpse of the suspect.

15. That no credence whatsoever was given to the testimony of the witnesses produced by the petitioner and all the evidence in support of plaintiff's good moral character (as shown by his record) was disregarded.

16. That the Trial Commissioner failed to make any findings of fact or state reasons in support of his recommendation and conclusion as required by Section 8-13.0 subdivision (b) of the Nassau County Administrative Code and Section 75(2) of the New York State Civil Service Law.

Section 8-13.0, subdivision (b) of the Nassau County Administrative Code reads as follows:

"b. Such members shall be disciplined for the following reasons only:

1. Conviction for any criminal offense;
2. Neglect of duty;
3. Violation of rules;
4. Neglect or disobedience of order;
5. Incapacity;
6. Absence without leave;
7. Conduct injurious to the public peace or welfare;
8. Immoral conduct;
9. Conduct unbecoming an officer; or
10. Any other breach of discipline.

The commissioner may designate a captain to conduct hearings on charges against lieutenants, sergeants and patrolmen and to report his findings and recommendations to the commissioner for action thereon. In case of disciplinary action by fine, not more

than thirty days' pay shall be forfeited and withheld for any offense."

The pertinent portion of Section 75(2) of the New York State Civil Service Law reads as follows:

"2. Procedure. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such office or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required."

17. That the failure by the Trial Commissioner to provide the Commissioner with the findings of fact and conclusions of law was fatal to the subsequent adoption by the Police Commissioner of the adjudgment of guilt and recommendation of dismissal and in view of the statutory requirement of findings of fact and conclusions of law, such action constituted a violation of the plaintiff's due process rights and equal protection under the law.

18. That further the Trial Commissioner admitted evidence in the hearing which was in violation of plaintiff's rights guaranteed to him by the Constitution of the State of New York, and the Constitution of the United States. In this respect, see paragraph "12" of this complaint.

19. That the acts complained of in specifications 2 and 3 of the charges did not constitute violations of Article IX,

Rules 10 and 11 and Article VI, Rule 9, subd. 1 of the Rules and Regulations of the Police Department, County of Nassau, New York.

20. That the conduct allegedly prohibited by the aforesaid Rules and Regulations of the Police Department of the County of Nassau are not adequately set forth, in that they fail to describe the conduct which is prohibited; that said rule deals in generalities, is vague, ambiguous and unconstitutional.

21. That the recommendation, determination and orders aforesaid in suspending the plaintiff from his duties as a Nassau County Patrolman from February 20, 1968 until January 6, 1969, constituted an abuse of discretion in imposing the measure of punishment, penalty and discipline; and that further the dismissal of the plaintiff constituted excessive punishment and was, therefore, violative of the plaintiff's rights under the Eighth Amendment to the United States Constitution.

22. That the plaintiff has exhausted his remedies in the Courts of New York State.

AS AND FOR A FIRST SEPARATE
AND DISTINCT CAUSE OF
ACTION (INJUNCTION)

23. The plaintiff herein repeats, reiterates and realleges each and every allegation of the within complaint from paragraph "1" to and including paragraph "22", as if fully set forth herein.

24. That the damages suffered and sustained, to wit, loss of reputation, prestige and dismissal from the Nassau County Police Department and membership in the Pension System thereof, which is a contractual right pursuant to Article 5, Section 7 of the New York State Constitution, are and will be irreparable and will be incapable of actual ascertainment.

25. That there is no other adequate or effective remedy at law and, therefore, the plaintiff has been compelled by necessity to make available the procedural remedies as employed herein.

AS AND FOR A SECOND SEPARATE
AND DISTINCT CAUSE OF ACTION,
TO WIT, THE SECOND COUNT
(CIVIL ACTION FOR DEPRIVATION
OF RIGHTS)

26. Plaintiff repeats, reiterates and realleges each and every allegation of the within complaint from paragraph "1" to and including paragraph "25" as if fully set forth herein.

27. Plaintiff was unjustly, wrongfully and unlawfully deprived of his civil and constitutional rights as these rights are more fully set forth in the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and his civil rights as set forth in the New York State Constitution and the Civil Rights Law of the State of New York.

28. That specifications Nos. 2 and 3 of the aforementioned charges were unlawful in that they were violative of plaintiff's constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and contrary to the decisional law as set forth by the United States Supreme Court in Gardner v. Broderick, 392 U.S. 273; Uniformed Sanitation Men Association, Inc. v. Commissioner of Sanitation of the City of New York, 320 U.S. 280; and Garrity v. New Jersey, 385 U.S. 493.

AS AND FOR A THIRD SEPARATE
AND DISTINCT CAUSE OF ACTION,
TO WIT, THE THIRD COUNT
(DECLARATORY JUDGMENT)

29. Plaintiff herein repeats, reiterates and realleges each and every allegation of the within complaint from paragraph "1" to and including paragraph "28", as if fully set forth herein.

30. That the plaintiff herein prays for a judgment of this Court declaring the rights and legal relations of the parties hereto; that this Court further declare that the plaintiff was unlawfully dismissed from the Nassau County Police Department and that the action of the defendants violated his constitutional rights guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and violated his rights under the decisional law as set forth by the Supreme Court in Gardner v. Broderick, 392 U.S. 273; Uniformed Sanitation Men Association, Inc. v. Commissioner of Sanitation of the City of New York, 320 U.S. 290; and Garrity v New Jersey, 385 U.S. 493.

31. That the basic contention of the plaintiff is that the defendant Trial Commissioner in failing to prepare adequate findings of fact and conclusions of law, was in violation of the Nassau County Administrative Code and the Civil Service Law of the State of New York, and that, therefore, his dismissal from the Nassau County Police Department should be declared a nullity.

32. That the Court should declare that the punishment meted out by the defendants was not only excessive, it was unlawful, arbitrary and absolutely unfounded.

33. That the adoption of the adjudgment of guilt and recommendation of dismissal by the Police Commissioner in the absence of any findings of fact or conclusions law constitute a denial of plaintiff's equal protection rights under the United States Constitution and, therefore, should be declared null and void.

AS AND FOR A FOURTH SEPARATE AND
DISTINCT CAUSE OF ACTION, TO WIT,
THE FOURTH COUNT, TITLE 28 U.S.C.
SECTION 1651-(a) "ALL WRITS SECTION"

34. Plaintiff repeats, reiterates and realleges each and every allegation of the within complaint from paragraph

"1" to and including paragraph "33", as if fully set forth at length herein.

35. That the above Section 1651(a) may be invoked in a District Court as a collateral aid to implement already existing jurisdiction*; that the said Section is auxillary to jurisdiction already acquired**; it is in aid of existing jurisdiction***.

WHEREFORE, plaintiff prays for an order of permanent injunction enjoining and restraining the defendants; and each of their successors, their officers, servants or agents from enforcing or seeking to enforce as against the plaintiff a certain order of dismissal of the plaintiff from the Nassau County Police Department by the defendant Police Commissioner of Nassau County dated January 1969; that plaintiff further demands from the Court a mandatory injunction that pending the hearing and determination of the within cause of action, that the status quo be restored and that the aforementioned order of dismissal be vacated and set aside, and that the plaintiff be restored to his former position and status as a Patrolman in the Nassau County Police Department with the appropriate salary therefor and the salaries denied him during the period of dismissal and all collateral benefits that

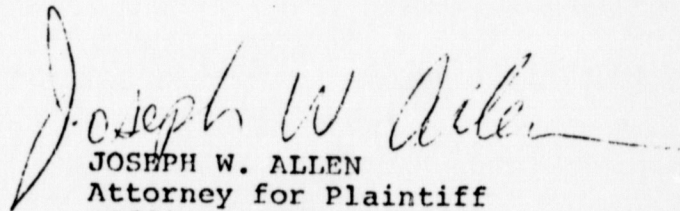
*United States v. Blackfeet, 244 F.Supp. 474

**Rosenbaum v. Bauer, 120 U.S. 450

***Haggard v. Tennessee, 421 F.2d 1384

14A

have been deprived him and that a declaratory judgment be entered to said effect, and for such other and further relief as to this Court may seem just and proper in the premises.



JOSEPH W. ALLEN
Attorney for Plaintiff
Office & P.O. Address
299 Broadway
New York, New York 10007
(212) 349-6770

15A
POLICE DEPARTMENT
COUNTY OF NASSAU, N. Y.

EXHIBIT A
ANNEXED TO COM
PLAINT.

Charges and Specifications

Mineola, N. Y., March 8, 1968

To the Commissioner of Police:

I hereby charge	Patrolman	MEED	William	W.	708	Sixth Precinct
	<small>Rank</small>	<small>Surname</small>	<small>Given Name</small>	<small>Initials</small>	<small>Shield No.</small>	<small>Command</small>
with:	VIOLATING (1) ARTICLE IX, RULES 10 AND 11; (2) ARTICLE VI, RULE 9, SUBDIVISION 1; (3) ARTICLE VI, RULE 9, SUBDIVISION 1 OF THE RULES AND REGULATIONS, POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK.					

SPECIFICATIONS:

in that 1. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth Precinct, did, at, about or between 1100 and 1200 hours on February 15, 1968, act in a manner unbecoming an officer and prejudicial to the good order and efficiency of the Police Department by taking and carrying away merchandise consisting of two one pound cans of coffee, a rubber bath mat and a package of sponge cloths from B. Altman and Company, Northern Boulevard, Manhasset, New York, without making payment for same and without the consent of the lawful owner.

2. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth precinct, did, at, on or about 2000 hours on February 17, 1968, fail to obey the instructions and directions of a Superior Officer by refusing to submit a written report of his activities at and conversations with employees of B. Altman and Company, Northern Boulevard, Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Chief Inspector Roland W. Grant.

3. On information and belief, Patrolman William W. Meed, Shield Number 708, Sixth Precinct, did, at, on or about 1745 hours on February 19, 1968, fail to obey the instructions and directions of a Superior Officer, by refusing to submit a written report of his activities at and conversations with employees of B. Altman and Company, Northern Boulevard, Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Inspector Richard W. Votapka.

Complainant

Roland W. Grant
Roland W. Grant
Deputy Chief Inspector
Commanding Officer
First Division

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

16A

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

WILLIAM W. MEED,

★ OCT 2 1973 ★

Plaintiff,

TIME A.M.
P.M.

-against-

Civil Action File
No. 73C 1320

LOUIS FRANK as Police Commissioner
of Nassau County (Successor to
FRANCIS B. LOONEY, former Police
Commissioner of Nassau County) and
THE NASSAU COUNTY POLICE DEPARTMENT,

Defendants.

-----X
S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of
LOUIS SCHULTZ, Senior Deputy County Attorney of Nassau County,
duly sworn to on the 26th day of September, 1973, and upon the
summons and complaint heretofore served herein, the Memorandum
of Law being submitted herewith, and the exhibits attached
hereto, the undersigned will move this Court, at a Stated Term
for Motions thereof, before Judge MARK A. COSTANTINO, to be held
at the United States Courthouse, 225 Cadman Plaza East, Brooklyn,
New York, on the 19th day of October, 1973, at 10 o'clock in
the forenoon of that day or as soon thereafter as counsel can
be heard, for an Order pursuant to Rule 12(b) of the Federal
Rules of Civil Procedure, dismissing the complaint of the plain-
tiff and granting judgment in favor of the defendants on the
grounds that:

provided by Section 214(2) of the New York State Civil Practice Law and Rules;

(2) The Court lacks jurisdiction over the subject matter;

(3) The matter has been completely adjudicated on the same issues in the Supreme Court of the State of New York; and

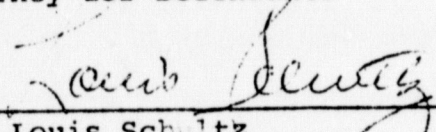
(4) There is a failure to state a claim upon which relief can be granted to the plaintiff in his complaint; and for such other and further relief as to this Court may seem just and proper.

Dated: Mineola, New York
October 1, 1973

Yours, etc.

JOSEPH JASPAN
County Attorney of Nassau County
Attorney for Defendants

By


Louis Schultz

Senior Deputy County Attorney
Office and P.O. Address
Nassau County Executive Building
Mineola, New York 11501

TO:

JOSEPH W. ALLEN, ESQ.
Attorney for Plaintiff
299 Broadway
New York, N. Y. 10007

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NEW YORK

-----X

WILLIAM W. MEED,

Plaintiff,

-against-

LOUIS FRANK as Police Commissioner
of Nassau County (Successor to
FRANCIS B. LOONEY, former Police
Commissioner of Nassau County) and
THE NASSAU COUNTY POLICE
DEPARTMENT,

Civil Action File
No. 73C 1320

Defendants.

-----X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of LOUIS SCHULTZ, Senior Deputy County Attorney of Nassau County, duly sworn to on the 26th day of September, 1973, and upon the summons and complaint heretofore served herein, the Memorandum of Law being submitted herewith, and the exhibits attached hereto, the undersigned will move this Court, at a Stated Term for Motions thereof, before Judge MARK A. COSTANTINO, to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 16th day of October, 1973, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the complaint of the plaintiff and granting judgment in favor of the defendants on the grounds that:

Law and Rules;

(2) The Court lacks jurisdiction over the subject matter;

(3) The matter has been completely adjudicated on the same issues in the Supreme Court of the State of New York; and

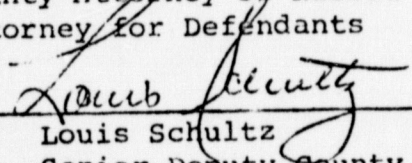
(4) There is a failure to state a claim upon which relief can be granted to the plaintiff in his complaint; and for such other and further relief as to this Court may seem just and proper.

Dated: Mineola, New York
September 26, 1973

Yours, etc.

JOSEPH JASPAN
County Attorney of Nassau County
Attorney for Defendants

By


Louis Schultz

Senior Deputy County Attorney
Office and P.O. Address
Nassau County Executive Building
Mineola, New York 11501

TO:

JOSEPH W. ALLEN, ESQ.
Attorney for Plaintiff
299 Broadway
New York, N. Y. 10007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM W. MEED,

Plaintiff,

-against-

Civil Action File
No. 73C 1320

LOUIS FRANK as Police Commissioner
of Nassau County (Successor to
FRANCIS B. LOONEY, former Police
Commissioner of Nassau County, and
THE NASSAU COUNTY POLICE DEPARTMENT,

Defendants.

-----X
STATE OF NEW YORK)
) SS:
COUNTY OF NASSAU)

LOUIS SCHULTZ, being duly sworn, deposes and says:

1. I am a Senior Deputy County Attorney of Nassau County, associated with JOSEPH JASPAN, County Attorney of Nassau County, attorney for the defendants herein.

2. This affidavit is submitted in support of the motion to dismiss the complaint of the plaintiffs on several grounds. The defendants contend that:

(a) the Court has no jurisdiction over the subject matter since there is no diversity of citizenship between the plaintiff and defendants and the minimum jurisdictional amount for Federal Court jurisdiction is not alleged;

(b) the Declaratory Judgment Act, 28 U.S.C. § 2201, does not confer jurisdiction on the Federal Courts where none otherwise exists;

(c) there has been a complete prior adjudication of the issues presented in the New York State courts;

(d) the complaint fails to state a claim for which relief may be granted.

3. The defendants herein were served with copies of the summons and complaint in this action on September 11, 1973. The time to answer the complaint has not yet expired.

4. Your deponent is fully familiar with all of the facts pertaining to the disciplinary proceedings conducted against the plaintiff by the Nassau County Police Department, and the Article 78 proceedings commenced in the Supreme Court of the State of New York and heard in the Appellate Division of the Supreme Court of the State of New York, and the New York State Court of Appeals, from the papers, records, transcripts and documents in his possession, and makes this affidavit in support of the motion to dismiss the complaint on the grounds hereinabove set forth.

5. The plaintiff has commenced this action against LOUIS FRANK as Police Commissioner of Nassau County and against the Nassau County Police Department. The action against LOUIS FRANK is predicated primarily by reason of the fact that he is the successor to FRANCIS B. LOONEY, the former Police Commissioner of Nassau County. There is no claim against said defendant, LOUIS FRANK, for any act that he committed or may have committed in connection with the allegation set forth in the complaint of the plaintiff.

6. In his complaint, the plaintiff alleges that his civil rights were violated as set forth in Title 42, United States Code, § 1983, and that he is, therefore, seeking a declaratory judgment under the provisions of Title 28, United States Code, §2201 and § 2202. The plaintiff was a former patrolman in the Nassau County Police Department who was dismissed from his position as patrolman on January 6, 1969, after a disciplinary proceeding which was brought against him for violation of certain rules and regulations of the Nassau County Police Department as alleged in Paragraph "10" and "11" of his complaint. The charges and specifications which were filed against him are set forth as part of Paragraph "11" of his complaint.

7. The charges arose out of a complaint made by employees of B. Altman and Company, whereby said plaintiff was accused of "shoplifting". He was additionally charged with failing to obey the instructions and directions of a Superior Officer by refusing to submit a written report of his activities at B. Altman and Company, after being ordered to do so by a Deputy Chief Inspector and a Deputy Inspector, as set forth in Specification "2" and "3" of the Charges, each of which is fully set forth as part of Paragraph "11" of plaintiff's complaint on Page 4 of his said complaint.

8. After the plaintiff was dropped from the rolls of the defendant Police Department on January 6, 1969, he commenced a proceeding in the Supreme Court of the State of New York,

County of Nassau, pursuant to the provisions of Article 78 of the New York State Civil Practice Law and Rules, wherein he claimed that his constitutional rights had been violated, that the punishment imposed upon him was excessive and that the action of FRANCIS B. LOONEY, who was then Police Commissioner, was arbitrary and capricious.

9. In the said "Article 78 Proceeding", plaintiff argued that the order given to him by his Superior Officers to file a written report of his activities and conversations with the employees of B. Altman and Company violated his constitutional rights and in support thereof, cited Garritty v. New Jersey, 385 U.S. 493 and Gardner v. Broderick, 392 U.S. 273. Both of these decisions rendered by the Supreme Court of the United States of America are now being cited by the plaintiff in support of his present action, and are set forth in Paragraph "12" of his complaint. The matter was transferred by the Supreme Court of the State of New York, County of Nassau, to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department.

10. That on March 9, 1970, a decision was rendered by said Appellate Division wherein it was:

"ORDERED that respondent's determination dated January 6, 1969 is hereby unanimously confirmed and proceeding dismissed on the merits, without costs."

That attached hereto and made a part hereof and marked Exhibit "I" is a copy of said decision, which consists of two pages, and on the second page of said decision, it further appears that the

proceeding was dismissed on the merits, and respondent's determination dated January 6, 1969 (the date on which plaintiff was dismissed from his position as a Nassau County patrolman) was confirmed without costs.

11. Thereafter, on March 15, 1971, plaintiff again moved pursuant to the provisions of Article 78 of the New York State Civil Practice Law and Rules, for a rehearing upon the ground of newly discovered evidence and upon errors of law allegedly committed in the police disciplinary proceeding. That attached hereto and made a part hereof and marked Exhibit "II" is the decision of Mr. Justice SULLIVAN of the New York State Supreme Court, transferring the proceeding and the cross-motion of the defendant (respondent in the previous proceeding) to the Appellate Division.

12. The renewed proceeding was dismissed by the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, during the October 1971 Term of said Court, and it appears in 37 App. Div. 2d 847-848. A full copy of said decision will be set forth in the accompanying supporting memorandum of law. Suffice it to say, the Court in dismissing the renewed proceeding concluded by stating that a hearing with full due process protection afforded petitioner, was conducted by a Deputy Inspector who reported to the Commissioner, and that in the opinion of said Court, the hearing tribunal as constituted, complied with the Administrative Code of Nassau County and jurisdiction was present.

13. Plaintiff then applied for leave to appeal to the Court of Appeals for the State of New York. That attached hereto and made a part hereof and marked Exhibit "III" is the decision from said Court wherein it was ordered that plaintiff's motion for leave to appeal to the Court of Appeals be denied.

14. In Paragraph "16" of the complaint, the plaintiff alleges that the Trial Commissioner failed to make any findings of fact or state reasons in support of his recommendation and conclusion as required by Section 8-13.0, subdivision (b) of the Nassau County Administrative Code and Section 75(2) of the New York State Civil Service Law. That attached hereto and made a part hereof and marked Exhibit "IV" is a copy of the findings of fact made by the Trial Commissioner, which was submitted to the Police Commissioner.

15. That acting upon said findings of fact and conclusions of law made by said Trial Commissioner, the Commissioner of Police rendered his decision approving and confirming the determinations and recommendations of the Trial Commissioner and finding the plaintiff guilty of Specifications "1", "2" and "3" as charged and ordering that said plaintiff be dismissed from his position as patrolman in the Nassau County Police Department, and that his name be dropped from the rolls of said Police Department as of the 6th day of January, 1969. That a copy of that determination is attached hereto and made a part hereof, and marked Exhibit "V". That further, as required by the rules and regulations of the Nassau County Police Department, FRANCIS B. LOONEY as Commissioner of Police, did dispose of the charges against the plaintiff herein as is set forth in "Disposition of

Charges", copy of which is attached hereto and made a part hereof and marked Exhibit "VI".

16. It is, therefore, quite apparent that the plaintiff in his previous Article 78 proceedings actually litigated the same constitutional questions now being presented to this Court as a basis for his Civil Rights suit. The State Courts were competent to decide the question raised by the plaintiff with regard to the alleged constitutional question as it pertained to the direction given to the plaintiff by his Superior Officers when the plaintiff was required to give a written statement concerning the activities of the plaintiff at the B. Altman and Company store, and which was the subject of Charges "2" and "3" in the Specifications lodged against the plaintiff in the disciplinary proceedings.

17. As has been stated in previous decisions rendered by the Federal Courts, the Federal Courts are not granted exclusive jurisdiction to enforce constitutional rights. Since the question of plaintiff's constitutional rights have been fully litigated in the State Courts, there is no compelling Federal interest in this case which militates against according res judicata effect to the determinations of the determination made by the Police Commissioner of the Nassau County Police Department, the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, and the New York State Court of Appeals. The only purpose attempted by the plaintiff for the commencement of this action is to seek to have this Court relitigate his alleged Federal claim, which was presented

to and decided by the Appellate Division of the Supreme Court of the State of New York and by the New York State Court of Appeals. The plaintiff, therefore, has no right to seek direct review of the State Court decisions in this Court. To permit the plaintiff to do so would give to this Court the right to Appellate Jurisdiction in this matter over the decisions of the State Courts. The jurisdiction possessed by the United States District Court is strictly original. The State provided an adequate means for the vindication of the plaintiff's constitutional interests and plaintiff's claim in the State Courts that he had been deprived of such constitutional interests was in all respects rejected.

18. There is no dispute with regard to the fact that the plaintiff was dismissed from his position as a Nassau County policeman on January 6, 1969. The plaintiff, by the commencement of this suit is challenging such dismissal, claiming that same was in deprivation of his Civil Rights for which reason he has commenced this action pursuant to the provisions of Title 42, § 1983, United States Code Annotated. The suit brought under the Civil Rights Act must be brought within the applicable statute of limitations, which the State Courts would enforce in a comparable State action. The timeliness of plaintiff's complaint is governed by the three-year period of limitations prescribed by the N.Y. C.P.L.R., § 214(2), which is the section applicable to an action to recover upon the law created or imposed by statute. Any cause of action which the plaintiff had in this case, without conceding that he does have any cause of

action, allegedly arose on January 6, 1969, and the summons and complaint in this case were served on September 11, 1973. His action has, therefore, not been timely instituted, and in addition to the reasons set forth above, his complaint should be dismissed for not having been commenced within the applicable three-year statute of limitations. Plaintiff and the defendants are both residents of the State of New York and since this action is not commenced in this Court by reason of diversity of citizenship, the New York State statute of limitations of three years must be applied.

19. There is no allegation of any act committed by the defendant, LOUIS FRANK, as Police Commissioner of Nassau County. This action is, therefore, against the Nassau County Police Department, against whom the plaintiff is complaining for the loss of his employment as a police officer. The Nassau County Police Department is not such a "person" as was intended by the provisions of Title 42, United States Code, § 1983, and Title 28, United States Code, § 43, for which additional reason plaintiff's complaint should be dismissed.

20. The complaint of the plaintiff fails to indicate that this Court has jurisdiction over the subject matter or that the request for a declaratory judgment confers jurisdiction on this Court, and plaintiff also fails to state a claim for which relief can be granted.

WHEREFORE, your deponent respectfully requests that the complaint be dismissed on the grounds set forth in the

Notice of Motion and spelled out in the within affidavit, which is further supported by the accompanying Memorandum of Law, and your deponent further requests such other and further relief on behalf of the defendants as to the Court may seem just and proper.

Sworn to before me this

26th day of September, 1973

Sophie Goldrich
Notary Public

Louis Schultz
Louis Schultz

SOPHIE GOLDRICH
NOTARY PUBLIC, State of New York
No. 30-1487975

Qualified in Nassau County
Commission Expires March 30, 1975

HON. MARCUS G. CHRIST
 HON. SAMUEL RABIN
 HON. JAMES E. HOFFMAN
 HON. ANDREW J. HENRIKSON
 HON. JEROME H. HENRIKSON
 HON. M. HENRY MARTUSCELLO
 HON. PHILIP M. KLEINFELD
 HON. A. DAVID BENJAMIN

Acting Presiding Justice
 Associate Justices

----- X

In the Matter of

William W. Mead,

Petitioner,

Order dismissing proceeding

v.

Francis B. Looney, Commissioner
of Police of the County of
Nassau,

Respondent.

----- X

The above named William W. Mead, petitioner, having instituted this proceeding by petition verified February 3, 1969 to review respondent's determination dated January 6, 1969; by order of the Supreme Court, Nassau County, dated April 23, 1969 the proceeding was transferred to this court for determination; and the proceeding having been submitted by Donald P. De Riggi, Esq., of counsel for petitioner and by Jerrold N. Cohen, Esq., of counsel for respondent; due deliberation having been had thereon; and upon the decision slip of the court herein, heretofore filed and made a part hereof; it is:

ORDERED that respondent's determination dated January 6, 1969 is hereby unanimously confirmed and proceeding dismissed on the merits, without costs.

Enter:

HERMAN M. PCOUL

Clerk of the Appellate Division

EXHIBIT "I"

_____ A D 2d _____ S - January 13, 1970

126 E.

In the Matter of William W. Meed,
petitioner, v. Francis B. Looney,
Commissioner of Police of the
County of Nassau, respondent.

Proceeding dismissed on the merits and respondent's
determination dated January 6, 1969 confirmed, without
costs. No opinion.

CHRIST, Acting P.J., RABIN, MARTUSCELLO, KLEINFELD
and BENJAMIN, JJ., concur.

March 9, 1970

IN RE MEED v LOONEY

126 E

2000

OF THE DISTRICT OF COLUMBIA

Commissioner of Police of the County of
Hawaii,

Annulment of the determination of the value of the

MOTION
DATE November 15, 1971

MOTION 3 & 65
CAL. NUMBER

TRIAL
CAL. NUMBER

The following papers numbered 1 to..... read on this motion

See an order pursuant to Article 73.

Notice of Motion/ORDER RE SHOW CAUSE

PAGES NUMBERED
1 - 27

Answering Affidavits..... 1712.

28 - 32

Replying Affidavits

Affidavits

Filed Papers.

Pleadings--Exhibits--Stipulation

Briefs: Plaintiff's/Petitioner's..... Defendant's/Respondent's.....

Upon the foregoing papers it is ordered that this ~~matter~~ proceeding and ~~con-~~ motion of respondents to dismiss same are respectfully referred to the Appellate Division, Second Judicial Department.

The petitioner was suspended on February 20, 1960 and finally dismissed on January 6, 1961 from his position of Detective in the Miami County Police Department. An Article 73 proceeding to revoke the dismissal was commenced on or about February 3, 1961 and after transfer of the proceeding to the Appellate Division, Criminal Department, the dismissal was confirmed on March 9, 1960 (34 A.D. 2d 670). It is asserted that a judgment was obtained from the Appellate Division and thereafter entered, but a copy has not been included in the submitted file.

This application for a rehearing is based upon the record of newly discovered evidence concerning the credibility of the principal complaining witness, and upon certain errors of law allegedly committed in the proceedings before the Board of Commissioners. There is no statutory right to a rehearing. Whether a rehearing should be granted is left to the discretion to be determined by the Appellate Division which passed upon the sufficiency of the evidence and made the judgment thereon.

EXHIBIT "II"

ONLY COPY AVAILABLE

Dated..... Mar. 13, 1971

WILLIAM J. ...

150

55000 11 30 22 24

IN COURT OF APPEALS

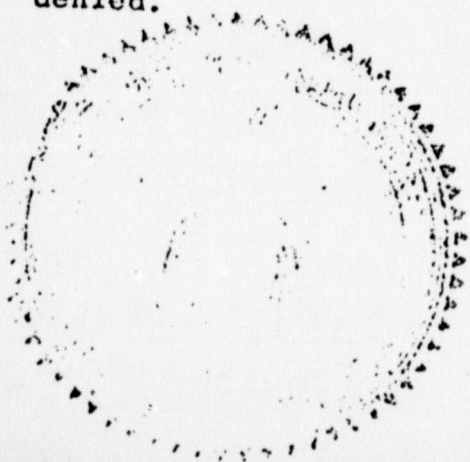
*At a Court of Appeals for the State of New
York, held at Court of Appeals Hall in the
City of Albany on the Twenty-eighth day
of September A. D. 19 72.*

Present, HON. STANLEY H. FULD, Chief Judge, presiding.

2 Mo. No. 683
William W. Weed, Appellant,
vs.
Nassau County Police Department,
by its Commissioner of Police,
Francis B. Looney, &c., Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.



A copy

Deputy Clerk

EXHIBIT "III"

POLICE DEPARTMENT, COUNTY OF NASSAU x

Case Number 2047

IN THE MATTER OF CHARGES

Trial Commissioner
Deputy Chief Inspector
Bert E. McConnell

- against -

PATROLMAN WILLIAM W. MEED

----- x

Charges of Violating Article IX, Rules 10 and 11, Article VI, Rule 9, Subdivision 1, and Article VI, Rule 9, Subdivision 1 of the Rules and Regulations of the Police Department, County of Nassau, New York, having been made to the Commissioner of Police, Police Department, County of Nassau, New York, against Patrolman William W. Meed, Shield Number 708, Sixth Precinct, dated March 8, 1968 by Deputy Chief Inspector Roland W. Grant, Commanding Officer, First Division, and said charges having been served on William W. Meed on the 9th day of March, 1968, and said William W. Meed having appeared before the Trial Commissioner on March 13, 1968 and having been informed by the Trial Commissioner of his legal rights and having thereupon entered a plea of "Not Guilty" to all specifications, a trial of said William W. Meed was subsequently held on said Charges and Specifications before the undersigned, who was duly designated Trial Commissioner by order of the Commissioner of Police dated March 23, 1968, and said William W. Meed having been represented by his attorney, James Edstrom, Esq. and complainant having been represented by Morris H. Schneider,

EXHIBIT "IV"

County
Attorney of Nassau County; Saul Roth, Esq., Deputy County
Attorney, of Counsel, and after hearing the proof and evi-
dence of the parties, Deputy Chief Inspector, Bert E. Mc-
Connell, hereby determines and recommends:

DETERMINATIONS

Specification Number 1.: Substantial evidence
was presented at the trial to prove that Patrolman William
W. Meed, Shield Number 708, Sixth Precinct, did, at, about
or between 1100 and 1200 hours on February 15, 1968, act
in a manner unbecoming an officer and prejudicial to the
good order and efficiency of the Police Department by taking
and carrying away merchandise consisting of two one pound
cans of coffee, a rubber bath mat and a package of sponge
cloths from B. Altman and Company, Northern Boulevard,
Manhasset, New York, without making payment for same
and without the consent of the lawful owner. THIS IN
VIOLATION OF ARTICLE IX, RULES 10 AND 11 OF
THE RULES AND REGULATIONS OF THE POLICE
DEPARTMENT, COUNTY OF NASSAU, NEW YORK.

Specification Number 2.: Substantial evidence
was presented at the trial to prove that Patrolman William
W. Meed, Shield Number 708, Sixth Precinct, did, at, on,
or about 2000 hours on February 17, 1968, fail to obey the
instructions and directions of a Superior Officer by refusing
to submit a written report of his activities at and conver-
sations!

(This page was apparently inadvertently
omitted from Exhibit IV and has been
inserted by the attorney for William
W. Meed, plaintiff-appellant.)

- 3 -

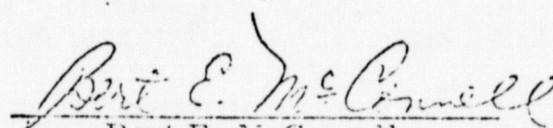
with employees of E. Altman and Company, Northern Boulevard Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Chief Inspector Roland W. Grant. THIS IN VIOLATION OF ARTICLE VI, RULE 9, SUBDIVISION 1 OF THE RULES AND REGULATIONS OF THE POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK.

Specification Number 3.: Substantial evidence was presented at the trial to prove that Patrolman William W. Meed, Shield Number 708, Sixth Precinct, did, at, on or about 1745 hours on February 19, 1968 fail to obey the instructions and directions of a Superior Officer by refusing to submit a written report of his activities at and conversations with employees of B. Altman and Company, Northern Boulevard, Manhasset, New York on February 15, 1968, after being ordered to do so by Deputy Inspector Richard W. Votapka. THIS IN VIOLATION OF ARTICLE VI, RULE 9, SUBDIVISION 1 OF THE RULES AND REGULATIONS OF THE POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK.

RECOMMENDATION

After careful consideration of the testimony, proof and evidence in this case, it is recommended to the Commissioner of Police of the Police Department, County of Nassau, New York that Patrolman William W. Meed be found guilty of Specifications 1, 2 and 3, as charged and that the

Commissioner of Police impose such disciplinary action as he shall deem fit and proper.



Bert E. McConnell
Deputy Chief Inspector
Trial Commissioner

Dated at Police Headquarters
Mineola, New York
December 31, 1968

POLICE DEPARTMENT, COUNTY OF NASSAU x

IN THE MATTER OF CHARGES

Case Number 3047

- against -

January 6, 1969

PATROLMAN WILLIAM W. MEED

----- x

Charges of Violating Article LX, Rules 10 and 11, Article VI, Rule 9, Subdivision 1, and Article VI, Rule 9, Subdivision 1 of the Rules and Regulations of the Police Department, County of Nassau, New York having been made to the Commissioner of Police, Police Department, County of Nassau, New York, against Patrolman William W. Meed, Shield Number 708, Sixth Precinct, dated March 8, 1968, by Deputy Chief Inspector Roland W. Grant, Commanding Officer, First Division, and said charges having been served on William W. Meed on the 9th day of March, 1968, and said William W. Meed having appeared before the Trial Commissioner on March 13, 1968 and having been informed by the Trial Commissioner of his legal rights and having thereupon entered a plea of "Not Guilty" to all specifications, a trial of said William W. Meed, was held on said Charges and Specifications before Deputy Chief Inspector Bert E. McConnell, who was duly designated Trial Commissioner by order of the Commissioner of Police dated March 23, 1968 and said William W. Meed, having been represented by his attorney, James Edstrom, Esq., and Bert E. McConnell,

EXHIBIT "V"

Trial Commissioner having heard the pleadings and the proof and evidence of the parties, and having filed with Francis B. Looney, Commissioner of Police, his determinations and recommendations dated December 31, 1968, and the said Francis B. Looney, Commissioner of Police of the Police Department, County of Nassau, New York having reviewed the said charges against William W. Meed, the evidence as contained in the record of the trial and the determinations and recommendations of Deputy Chief Inspector Bert E. McConnell, Trial Commissioner, it is

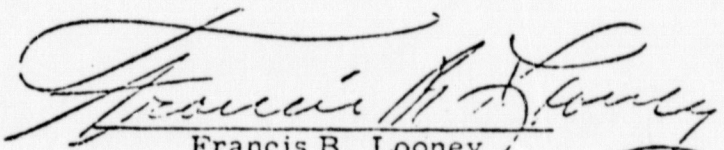
ORDERED, that the Commissioner of Police of the Police Department, County of Nassau, New York, does hereby approve and confirm the determinations and recommendations of the Trial Commissioner and finds Patrolman William W. Meed guilty of Specification Numbers 1, 2 and 3 as charged.

IT IS FURTHER ORDERED, that William W. Meed, Patrolman, Shield Number 708, Sixth Precinct, Serial Number 1714 be dismissed from his position of Patrolman in the Police Department, County of Nassau, New York, and that his name be dropped from the rolls of said Police Department, as of the 6th day of January 1969 at 2400.

Dated at Police Headquarters

Mineola, New York

January 6, 1969


Francis B. Looney
Commissioner of Police

40A
HEADQUARTERS

POLICE DEPARTMENT, COUNTY OF NASSAU

COMMISSIONER'S)
ORDER NUMBER 1)

(MINEOLA, NEW YORK
(JANUARY 6, 1969

Disposition of Charges

Case Number 3047 -

Meed, William W., Patrolman Shield Number
708, Serial Number 1714, Sixth Precinct

Charges of Violating Article IX, Rules 10 and 11, Article VI, Rule 9, Subdivision 1, and Article VI, Rule 9, Subdivision 1 of the Rules and Regulations of the Police Department, County of Nassau, New York having been made to the Commissioner of Police, Police Department, County of Nassau, New York, against Patrolman William W. Meed, Shield Number 708, Sixth Precinct, dated March 8, 1968, by Deputy Chief Inspector Roland W. Grant, Commanding Officer, First Division, and said charges having been served on William W. Meed on the 9th day of March, 1968 and said William W. Meed having appeared before the Trial Commissioner on March 13, 1968 and having been informed by the Trial Commissioner of his legal rights and having thereupon entered a plea of "Not Guilty" to all specifications, a trial of said William W. Meed was held on said Charges and Specifications before Deputy Chief Inspector Bert E. McConnell, who was duly designated Trial Commissioner by order of the Commissioner of Police dated March 23, 1968 and said William W. Meed having been represented by his attorney, James Edstrom, Esq., and Bert E. McConnell, Trial Commissioner having heard the pleadings and the proof and evidence of the parties, and having filed with Francis B. Looney, Commissioner of Police, his determinations and recommendations dated December 31, 1968, and the said Francis B. Looney, Commissioner of Police of the Police Department, County of Nassau, New York, having reviewed the said charges against William W. Meed, the evidence as contained in the record of the trial and the determinations and recommendations of Deputy Chief Inspector Bert E. McConnell, Trial Commissioner, it is

ORDERED, that the Commissioner of Police of the Police Department, County of Nassau, New York, does hereby approve and confirm the determinations and recommendations of the Trial Commissioner, and finds Patrolman William W. Meed guilty of Specification Numbers 1, 2 and 3 as charged.

IT IS FURTHER ORDERED that William W. Meed, Patrolman, Shield Number 708, Sixth Precinct, Serial Number 1714, be dismissed from his position of Patrolman in the Police Department, County of Nassau, New York, and that his name be dropped from the rolls of said Police Department as of the 6th day of January 1969 at 2400.

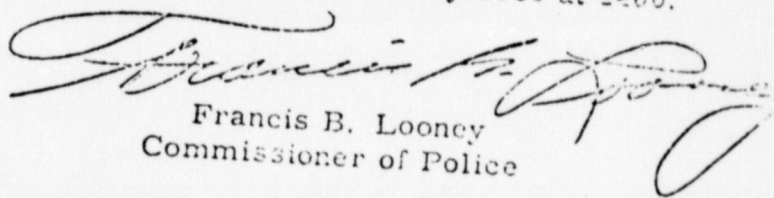

Francis B. Looney
Commissioner of Police

EXHIBIT "VI"

11
CLOSED

41A

U.S. DISTRICT COURT E.D. NY

★ FEB 26 1974 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
WILLIAM W. MEED

v.

LOUIS FRANK, as Police Commissioner
of Nassau County (Successor to Francis
B. Looney, former Police Commissioner
of Nassau County), and The Nassau
County Police Department

TIME A.M.

: P.M.

: 73-C-1320

: MEMORANDUM
: and
: ORDER

: FEB 26 1974
-----X

A p p e a r a n c e s :

Joseph W. Allen, Schofield, Dienst & Allen, P.C., 299
Broadway, New York City 10007

Joseph Jaspa County Attorney, Nassau County, by Louis
Schultz, Senior Deputy County Attorney, Nassau County
Executive Building, Mineola, New York 11501

COSTANTINO, D.J.

This is a motion to dismiss a complaint brought by a
former Nassau County police officer against the Nassau
County Police Department and its Police Commissioner seeking
declaratory relief that his dismissal from the police force
violated his civil rights and injunctive relief requiring
the police force to rehire him. The motion to dismiss is
based upon defendants' allegations that (1) the complaint
fails to state a claim upon which relief can be granted,

(2) the action has not been timely commenced, and (3) the matter has been previously and fully litigated in the courts of New York State.

On February 20, 1968 the plaintiff was suspended from the police force after he had been charged with shoplifting from B. Altman & Company. He refused to submit a report concerning the charges, maintaining that since he was off duty at the time of the alleged acts he did not have to account for his activities to the Police Department. At a disciplinary trial within the Police Department he was charged with the unlawful taking and failing to obey the orders to submit a report. The report of the Trial Commission finding him guilty of the charges was adopted by the then Police Commissioner, Francis B. Looney, on January 6, 1969 at which time plaintiff was dismissed from the police force.

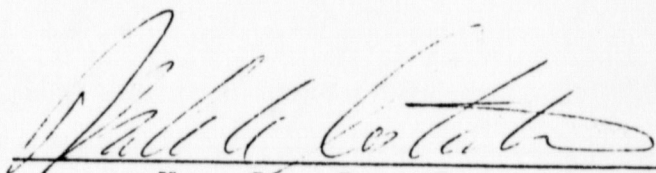
Plaintiff commenced a proceeding pursuant to Article 78, New York CPLR, to have the decision reviewed on the ground that his constitutional rights had been violated. Specifically, plaintiff claimed that he should not have been required to give a statement against himself, that the

evidence did not establish his guilt and that the "sentence" was excessive. The matter was heard by the Appellate Division of the Supreme Court, Second Department, which on May 9, 1970 confirmed the Commissioner's decision and dismissed the proceeding on the merits. Matter of Meer v. Looney, 34 App. Div. 2d 620 (1970). Plaintiff commenced a second Article 78 proceeding attacking the Police Commissioner's decision. The Appellate Division, Second Department again dismissed the proceeding. 37 App. Div. 2d 847 (1971). Plaintiff next applied for leave to appeal to the New York Court of Appeals which on September 28, 1972 denied the motion.

This action was commenced on September 4, 1973. Plaintiff alleges violation of his civil rights basing his claim on 42 U.S.C. § 1983. The applicable statute of limitations is three years, pursuant to New York CPLR § 214 (2) (McKinney's 1972) - actions based upon a liability created or imposed by a statute. Swan v. Board of Higher Education, 319 F.2d 56 (2d Cir. 1963); Romer v. Leary, 425 F.2d 186 (2d Cir. 1970); Ortiz v. LaVallee, 442 F.2d 912, 913-14 (2d Cir. 1971). The action is clearly untimely.

Furthermore, the issues in this case have been fully litigated in the state courts and their decisions must be given res judicata effect. Johnson v. Department of Water and Power, 450 F.2d 294 (9th Cir. 1971), cert. denied 405 U.S. 1072 (1972); Spampinato v. City of New York, 311 F.2d 439 (2d Cir. 1962), cert. denied 372 U.S. 980 (1963), reh. denied 374 U.S. 818 (1963); Murray v. Oswald, 333 F.Supp. 490 (S.D.N.Y. 1971).

Accordingly, the defendants' motion to dismiss is granted. There is no need to consider defendants' other grounds for making the motion.


U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

45A MAR 28 11 44 AM

WILLIAM W. MEED

v.

LOUIS FRANK, as Policemmissioner
of Nassau County (Successor to Francis
B. Looney, former Police Commissioner
of Nassau County), and The Nassau
County Police Department

U.S. DISTRICT COURT
EASTERN DISTRICT
NEW YORK

73-C-1320

U.S. DISTRICT COURT

MAR 27 1974

NOTICE OF APPEAL
P.M.

Notice is hereby given that WILLIAM MEED, plaintiff
above named hereby appeals to the United States Court of Appeals
for the Second Circuit from the Order dismissing the complaint
and denying the cross motion of the plaintiff entered in this
action on February 26, 1974

Dated: New York, New York
March 28, 1974

JOSEPH W. ALLEN
Office & P. O. Address
299 Broadway
New York, New York 10007
349-6770
Attorney for Plaintiff

the person so served to be the person mentioned and described in said papers as the
Sworn to before me, this day of 19 personally. Deponent knew the therein.

